THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

KURT SKAU, on behalf of himself and on behalf of others similarly situated,

Plaintiff,

v.

JBS CARRIERS, INC., a Delaware corporation,

Defendant.

NO. 2:18-cv-00681-RAJ

PLAINTIFF'S MOTION FOR REMAND

NOTED FOR CONSIDERATION: July 6, 2018

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I. INTRODUCTION

Defendant JBS Carriers, Inc. (JBS) first removed this case on October 5, 2017, asserting diversity jurisdiction existed under 28 U.S.C. § 1332(a). The Honorable John C. Coughenour granted Plaintiff Kurt Skau's motion to remand to state court, holding that JBS failed to show the amount in controversy exceeded the jurisdictional limit of $75,000. *Skau v. JBS Carriers, Inc.*, 2:17-cv-01499-JCC, Dkt. No. 21 at 4 (Nov. 30, 2017). Judge Coughenour rejected Defendant's argument that future, unaccrued attorneys' fees could be included for purposes of satisfying the amount in controversy. *Id.*

JBS has now removed this case for a second time on the same grounds and making the same arguments Judge Coughenour has already rejected. JBS seeks a second bite at the apple based on its misreading of the Ninth Circuit's decision in *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413 (9th Cir. 2018). Despite the fact that *Chavez* does not address future attorneys' fees, JBS relies on *Chavez* to reargue that future attorneys' fees must be considered when determining the amount in controversy. JBS argues that its erroneous reading of *Chavez* constitutes a change of circumstances, allowing JBS to remove this case months after the removal deadline has passed. But *Chavez* does not make any new law and JBS's second petition for removal is therefore untimely. Moreover, because *Chavez* does not address future attorneys' fees, the case does not change the law on which Judge Coughenour relied when he remanded this case this first time, making JBS's second petition improper.

JBS also fails to carry its burden to overcome the strong presumption against removal jurisdiction. As the party seeking removal, JBS has the difficult burden of establishing by a preponderance of the evidence that the amount in controversy exceeds $75,000. Even if

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future attorneys' fees could be included in the amount in controversy (they cannot), JBS disregards well-established Ninth Circuit precedent holding that attorneys' fees in class actions cannot be attributed solely to the named plaintiff. Because the Court "cannot base [a finding of] jurisdiction on . . . speculation and conjecture," remand is proper. *Roth v. Comerica Bank*, 799 F. Supp. 2d 1107, 1118 (C.D. Cal. 2010) (quoting *Lowdermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 1002 (9th Cir. 2007)).

For these reasons and those that follow, Mr. Skau respectfully requests the Court grant his motion for remand and award him the attorneys' fees and costs he has incurred as a result of JBS's second improper and unreasonable removal of this case.

II. STATEMENT OF FACTS

A. Factual background.

JBS is an interstate and regional truckload transportation company that employs drivers based in the state of Washington. Dkt. No. 1, Ex. A. ¶ 3.2. JBS pays its drivers on a piece-rate basis for each mile driven and for certain other activities. *Id.* ¶ 5.2. Plaintiff Kurt Skau is a former driver employee of JBS who brings this case as a class action on behalf of all similarly situated drivers. *Id.* ¶ 4.1. Mr. Skau alleges that JBS has engaged in a common course of failing to pay drivers at least a minimum wage for all hours spent performing many work activities—including for time spent fueling, scaling, loading, washing equipment, and inspections—and for all hours of work during mandatory orientation and driver training. *Id.* ¶¶ 5.3–5.5. Mr. Skau also alleges that JBS has engaged in a common course of failing to compensate drivers for the rest breaks to which they are entitled under Washington law, failing to pay overtime wages to drivers, and failing to keep true and

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accurate time records for all hours worked by drivers. *Id.* ¶¶ 5.7–5.15. Finally, Mr. Skau alleges that JBS's violations of Washington law have been willful. *Id.* ¶¶ 10.2–10.5.

Mr. Skau seeks damages for uncompensated work time and rest breaks as well as overtime wages. *Id.* ¶¶ 6.1–10.5. Mr. Skau also seeks double damages, attorneys' fees, and costs. *Id.*

B. Procedural background.

On September 5, 2017, Mr. Skau filed this action in King County Superior Court. Dkt. No. 1, Ex. A. On October 5, 2017, JBS filed its first notice of removal to federal court on the purported grounds of diversity jurisdiction under 28 U.S.C. § 1332(a). *Skau v. JBS Carriers, Inc.*, No. 2:17-cv-01499-JCC, Dkt. No. 1 (Oct. 5, 2017). Because JBS improperly relied on an improper estimate of Plaintiff's future attorneys' fees to meet the jurisdictional requirements of 28 U.S.C. § 1332(a), Mr. Skau moved to remand the case. *Id.*, Dkt. No. 13.

On November 30, 2017, the Honorable John C. Coughenour granted Mr. Skau's motion, holding that "only attorney fees incurred at the time of removal should be included in the amount in controversy determination." *Id.*, Dkt. No. 21 at 3. At that time, the amount in controversy totaled approximately $53,648 in damages for Mr. Skau's unpaid wages and $14,085 in attorneys' fees, for a total of approximately $67,733. *Id.* at 4. Judge Coughenour held that the amount in controversy requirement for diversity jurisdiction had not been met and that the Court therefore lacked subject matter jurisdiction. *Id.* Judge Coughenour remanded the case to state court. *Id.*

On May 10, 2018, JBS removed this case for a second time, asserting there has been a change in law that justifies reconsideration of Judge Coughenour's order remanding this case. Dkt. No. 1 at 3–4.

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III. AUTHORITY AND ARGUMENT

A. This case should be remanded because there has been no change in circumstances to justify JBS's second petition for removal.

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only where authorized by statute or the Constitution. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts "strictly construe the removal statute against removal jurisdiction." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Accordingly, a "strong presumption against removal jurisdiction" exists. *Gaus*, 980 F.2d at 566 (citation omitted). This "jealous restriction" "avoid[s] offense to state sensitiveness" and "reliev[es] federal courts of the overwhelming burden of business that intrinsically belongs to the state courts in order to keep them free for their distinctive federal business." *Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (per curiam). "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Gaus*, 980 F.2d at 566.

The removal statutes generally require a party to remove a case within 30 days of receiving the complaint. *See* 28 U.S.C. § 1446, 1453(b). The statutes provide an exception to this rule: "if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after . . . it may first be ascertained that the case is one which is or has become removable." *Id*. § 1446(b)(3). In other words, a successive removal attempt is untimely and improper if it is based on the same grounds as one the court had previously remanded. *Rea v. Michaels Stores Inc.*, 742 F.3d 1234, 1238 (9th Cir. 2014) (noting section 1447 prevents a "district court from considering a removal based on the same grounds as one the court had previously remanded") (quoting *Seedman v. U.S. Dist. Court*, 837 F.2d 413, 414

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(9th Cir. 1988)).

A district court will consider a successive petition for removal where "a relevant change of circumstances" exists. *Kirkbride v. Continental Cas. Co.*, 933 F.2d 729, 732 (9th Cir. 1991). A change in circumstances occurs when "subsequent pleadings or events reveal a *new* and *different* ground for removal." *Reyes v. Dollar Tree Stores, Inc.*, 781 F.3d 1185, 1188 (9th Cir. 2015) (emphasis in original) (quoting *Kirkbride*, 933 F.2d at 732). In the Ninth Circuit, an intervening change of law that gives rise to a new basis for subject-matter jurisdiction may constitute a sufficient change in circumstances. *Reyes*, 781 F.3d at 1188 (finding second removal timely because class certification order that expanded the class definition constituted a change of circumstances); *Rea*, 742 F.3d at 1238 (finding second removal timely where remand was based "on grounds that subsequently became incorrect"). Without a change in circumstances, however, a successive petition for removal is untimely and improper. *Reyes*, 781 F.3d at 1188.

Here, there has been no change in circumstances to justify JBS's second removal. Despite JBS's argument to the contrary, *Chavez* does not change the law; it has long been the law that future lost wages are damages that may be included when calculating the amount in controversy. Moreover, the *Chavez* decision does not address future attorneys' fees. Thus, JBS's second petition is untimely, improper, and unreasonable.

1. <u>JBS's second petition for removal is untimely because the *Chavez* decision does not constitute a change in circumstances.</u>

JBS bases its second petition for removal on the same grounds as its first, again arguing that the amount in controversy is met when future attorneys' fees are included. Judge Coughenour rejected this argument, finding that "only attorney fees incurred at the time of

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removal should be included in the amount in controversy determination." *Skau v. JBS Carriers, Inc.*, 2:17-cv-01499-JCC, Dkt. No. 21 at 4 (Nov. 30, 2017). JBS asserts the Court should reconsider this issue given the Ninth Circuit's decision in *Chavez*. But *Chavez* does not address the issue and does not signal a change in any relevant law. Thus, there has been no change in circumstances to justify JBS's untimely second petition.

In *Chavez*, the Ninth Circuit held that future lost wages may be considered for purposes of the amount in controversy. 888 F.3d at 417. There, the plaintiff sued her former employer, alleging wrongful termination and various harassment, discrimination, and retaliation claims. *Id.* at 415. Among other damages, she sought damages for lost wages and loss of future wages. *Id.* The court held that damages for future lost wages may be included in the amount in controversy because they are "damages that are claimed at the time the case is removed by the defendant." *Id*. at 417. (emphasis added). This holding does not signal a change in the law regarding the inclusion of future damages in the amount in controversy calculation. To the contrary, this has been the law in the Ninth Circuit for more than a decade. *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) (finding district court did not err in holding the amount in controversy exceeded $75,000 where the calculation relied on both past and future wages); *see also Grieff v. Brigandi Coin Co.*, No. C14–214 RAJ, 2014 WL 2608209 (W.D. Wash. June 11, 2014) (same).

In fact, in his first motion for remand, Plaintiff cited to this Court's decision in *Grieff* which similarly held that for purposes of the amount in controversy, damages include "future lost income." *See Grieff*, 2014 WL 2608209, at *3; *see also Skau*, 2:17-cv-01499-JCC, Dkt. No. 13 at 4 (Oct. 5, 2017). In *Grieff*, the Court explained that because "jurisdiction depends on the

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state of affairs when a case arrives in federal court," future lost wages may be included in the amount in controversy. 2014 WL 2608209, at *3 (citing *Gardynski-Leschuck v. Ford Motor Co.*, 142 F.3d 955, 958 (7th Cir. 1998)). The Court reasoned that future lost wages are damages that "relate back to the same injury or harm" and therefore provide "a remedy for an injury suffered prior to the case arriving in federal court." *Id.* Courts in this district have long agreed. *See, e.g.*, *Matthiesen v. Autozone Stores, Inc.*, No. 2:15–CV–0080–TOR, 2015 WL 3453418, at *3 (E.D. Wash. May 29, 2015) (including damages for past and future lost wages in amount in controversy calculation); *Thompson v. Big Lots Stores, Inc.*, No. 1:16-cv-01464-LJO-JLT, 2017 WL 590261, at *4 (E.D. Cal. Feb 13, 2017) ("[T]he Court may calculate lost income to include both past and future lost income in determining the amount in controversy."); *James v. Childtime Childcare, Inc.*, No. Civ. S-06-2676 DFL DAD, 2007 WL 1589543, at *4 n.1 (E.D. Cal. June 1, 2007) (finding that the court "may consider both past and future lost wages" for purposes of amount in controversy). Thus, *Chavez* does not announce a change in the law. JBS was well-aware of the present state of the law pertaining to future damages when it filed its second petition for removal. *See Skau*, 2:17-cv-01499-JCC, Dkt. No. 13 at 4. There has been no change in circumstances to justify JBS's second petition. Thus, JBS's second petition for removal is untimely.

2. JBS's second petition for removal is improper because *Chavez* does not address the inclusion of future attorneys' fees in the amount in controversy.

JBS's petition is also improper because it is "based on the same grounds" as the first. *Gollner v. Conformis, Inc.*, No. 318CV00226MMDVPC, 2018 WL 2323521, at *1 (D. Nev. May 18, 2018) (holding that court did not have jurisdiction over second removal attempt based on the same grounds as the first) (quoting *Seedman*, 837 F.2d at 414). Specifically, JBS again argues that

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the amount in controversy is met when future attorneys' fees are included. Judge Coughenour properly rejected this same argument when JBS removed this case the first time and there has been no intervening change in the law on which Judge Coughenour relied to support his decision. *Skau*, 2:17-cv-01499-JCC, Dkt. No. 21 at 3 (Nov. 30, 2017) (citing *Holstrom v. Safeco Ins. Co.*, No. C12-0506-JCC, Dkt. No. 28 at 4 (W.D. Wash. 2012)).

To the contrary, courts in this district overwhelmingly agree that it is improper for the amount in controversy to include an estimate of future fees. *See id.* ("[O]nly attorney fees incurred at the time of removal should be included in the amount in controversy determination.") (citing cases); *Keodalah v. Allstate Ins. Co.*, No. C15-01412 RAJ, 2016 WL 4543200, at *4 (W.D. Wash. Mar. 25, 2016) ("Courts in this district have held that future attorney fees should not be considered when determining the amount in controversy."); *Grieff*, 2014 WL 2608209, at *3 ("[F]uture attorney's fees not yet incurred are not an amount in controversy at the time of removal.") (internal quotation omitted); *Kahlo v. Bank of Am., N.A.*, No. C12-0083RSM, 2012 WL 1067237, at *3 (W.D. Wash. Mar. 28, 2012) (rejecting "defendants' inclusion of plaintiff's attorney's fees as speculative and unsupported" and finding "they cannot be included in determining the amount in controversy.").

While the Ninth Circuit has not resolved this issue, "it appears that a nascent consensus may be emerging among the district courts of this Circuit, finding that attorneys' fees not yet incurred may not be included in the amount in controversy calculation." *MIC Philberts Invs. v. Am. Cas. Co. of Reading, Pa.*, No. 1:12-CV-0131 AWI-BAM, 2012 WL 2118239, at *5 (E.D. Cal. June 11, 2012); *see also Consumer Research & Prot., Inc. v. Fred Meyer Stores, Inc.*, No. 3:17-CV-00006 JWS, 2017 WL 3037418, at *2 (D. Alaska July 18, 2017) ("[A]ttorney's

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fees associated with post-removal legal services may not be included in determining the amount in controversy."); *Dumbrell v. PowaPos, Inc.*, No. 16CV2305-LAB (MDD), 2017 WL 2349062, at *1 (S.D. Cal. May 30, 2017) (internal citation omitted) ("[L]egal expenses that lie in the future and can be avoided by the defendant's prompt satisfaction of the plaintiff's demand are not an amount 'in controversy' when the suit is filed."); *Sturdevant v. 24 Hour Fitness USA, Inc.*, No. 3:16-CV-2119-AC, 2017 WL 359175, at *3 (D. Or. Jan. 23, 2017) ("[U]naccrued attorney fees are not part of the amount in controversy.").

The Ninth Circuit's decision in *Chavez* does not alter the principle that future attorneys' fees are not included in the amount in controversy. Indeed, the opinion does not address future attorneys' fees. *See generally Chavez*, 888 F.3d 413. That the Court's holding is limited to damages is demonstrated throughout the opinion. *See, e.g.*, *id.* at 414 ("[The amount in controversy] is not limited to wages a plaintiff-employee would have earned before removal") (emphasis added); *id.* at 418 ("Where, as here, a plaintiff's complaint at the time of removal claims wrongful termination resulting in lost future wages, those future wages are included in the amount in controversy.") (emphasis added).

Recognizing that *Chavez* does not address the issue, JBS argues that the holding in *Chavez* regarding future lost wages extends to the inclusion of future attorneys' fees. Dkt. No. 1 at 3. It does not. While future damages relate to the injury at issue and are ascertainable when the case arrives in federal court, future attorneys' fees are attenuated and speculative in nature.

In *Grieff*, this Court considered this exact issue and concluded that while future damages may be included in the amount in controversy, future attorneys' fees are far too

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speculative. 2014 WL 2608209, at *3. The Court explained that federal court jurisdiction is determined when a case first arrives in federal court, whether originally filed by a plaintiff, removed by defendant, or by some other method. *Id*. The Court concluded that future damages may be included in the amount in controversy because "damages, including future damages, provide a remedy for an injury suffered prior to the case arriving in federal court." *Id*. In contrast, legal fees accrue on an ongoing basis for work performed by counsel, and the amount is largely dependent on legal strategy and on events in the control of the parties. *Id*. Legal fees may also be avoided, such as by prompt settlement, or may accrue over years if a party takes an aggressive litigation strategy. *Id*. "Thus, future legal fees are distinct from future damages since the amount of future legal fees are in the control of the client or counsel, and any amount of legal fees that might be awarded . . . would not provide a remedy for any injury suffered prior to arriving in federal court." *Id*. The Ninth Circuit's holding in *Chavez* regarding future damages is therefore inapposite.

Because *Chavez* does not change any relevant law or even address the inclusion of future attorneys' fees in the amount in controversy calculation, JBS's reliance on *Rea* is misplaced. 742 F.3d at 1238. In *Rea*, the district court previously remanded the case because of damages waivers that limited any recovery at or above the amount in controversy requirement. *Id.* at 1236. The defendant's second removal followed a newly issued Supreme Court decision that explicitly prohibited such damages waivers. *Id.* at 1237–38. Unlike *Rea*, the *Chavez* decision does not render the basis for Judge Coughenour's remand order incorrect because *Chavez* does not change any relevant law, let alone the law regarding future attorneys' fees.

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As a last-ditch effort to inflate the amount in controversy, JBS argues that the fees Mr. Skau has incurred since JBS's first unsuccessful petition for removal should be included and are likely sufficient to meet the amount in controversy requirement. Dkt. No. 1 at 9–10. JBS cannot file successive improper and untimely petitions for removal until Mr. Skau has incurred attorneys' fees sufficient to meet the amount in controversy requirement. JBS's second petition is untimely and improper. Any fees Mr. Skau has incurred since the first removal are therefore irrelevant. Moreover, as set forth below, even if all current fees are included, the amount in controversy would still fall short of the jurisdictional requirement when the fees are properly divided among class members.

In short, *Chavez* does not change the law and does not alter the principle that future attorneys' fees are not considered part of the amount in controversy. Thus, JBS's second attempt at removal is "based on the same grounds" as the first and is therefore improper. *See Rea*, 742 F.3d at 1238. The Court should remand this case to state court.

B. JBS cannot meet its burden of establishing the amount in controversy requirement.

The removing party bears the burden of establishing that federal jurisdiction exists. *Abrego*, 443 F.3d at 682–83. "Where it is not facially evident from the complaint that more than $75,000 is in controversy, the removing party must prove, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold." *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003). To meet its burden, the removing party must set forth "in the removal petition itself, the underlying facts supporting its assertion that the amount in controversy exceeds [$75,000]." *Gaus*, 980 F.2d at 567. "[A] court 'cannot base [a finding of] jurisdiction on a [d]efendant's speculation and conjecture.'"

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Roth, 799 F. Supp. 2d at 1118 (brackets in original) (quoting *Lowdermilk*, 479 F.3d at 1002). JBS fails to carry its burden of proving by a preponderance of the evidence that the amount in controversy exceeds $75,000 because attorneys' fees must be allocated among all class members.

Any potential attorneys' fee award in a class action "cannot be allocated solely to [named] plaintiffs for purposes of amount in controversy" unless the underlying statute limits an award of attorneys' fees only to the named plaintiffs. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 942 (9th Cir. 2001) (attorneys' fees are not attributed solely to named plaintiffs under statute authorizing award of attorneys' fees "to a successful party"), holding modified on other grounds by *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 858 (9th Cir. 2001) (potential attorneys' fees under statute authorizing fees "to a prevailing plaintiff . . . must be divided among all members of the plaintiff class for purposes of amount in controversy").

Mr. Skau seeks attorneys' fees on behalf of himself and the proposed class under Washington's Minimum Wage Act (chapter 49.46 RCW), Wage Payment Act (chapter 49.48 RCW), and Wage Rebate Act (chapter 49.52 RCW). *See* Dkt. No. 1, Ex. A ¶¶ 6.8, 7.5, 8.6, 9.4, 10.5. None of these statutes limit the award of attorneys' fees to only the named representative. *See* RCW 49.46.090(2) (authorizing award of attorneys' fees to "any employee paid less than the amounts to which he or she is entitled under [the Minimum Wage Act]"); RCW 49.48.030 (authorizing attorneys' fees to "any person . . . successful in recovering judgment for wages or salary owed to him or her"); RCW 49.52.070 (authorizing award of attorneys' fees to "the aggrieved employee"). Thus, any future attorneys' fees must be

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allocated among the entire proposed class.

Applying *Gibson* and *Kanter*, district courts in the Ninth Circuit have held that attorneys' fees must be allocated to all proposed class members for purposes of calculating the amount in controversy under statutes with language similar to Washington's wage statutes. *See Dix v. ICT Grp., Inc.*, No. CS-03-0315-LRS, 2003 WL 22852135, at *5–6 (E.D. Wash. Oct. 20, 2003) (holding "the claims of the class members are separate and distinct and therefore cannot be aggregated to arrive at the jurisdictional amount" under Washington CPA provision authorizing award of attorneys' fees to "[a]ny person who is injured"); *Olson v. Michaels Stores, Inc.*, No. CV1703403ABGJSX, 2017 WL 3317811, at *4–5 (C.D. Cal. Aug. 2, 2017) (holding the named plaintiff "put in controversy only his *pro rata* share of attorneys' fees" under statute permitting award of attorneys' fees to "any employee who prevails"); *Perez v. WinnCompanies, Inc.*, No. 1:14-CV-01497-LJO, 2014 WL 5823064, at *10 (E.D. Cal. Nov. 10, 2014) (holding attorneys' fees may not be allocated only to named plaintiff under statute authorizing award of attorneys' fees "to the employee").

JBS has failed to present evidence showing that Mr. Skau's pro rata share of attorneys' fees, even inclusive of any future attorneys' fees, is sufficient to exceed the amount in controversy. As of the date of JBS's second notice of removal, Mr. Skau's attorneys have incurred $49,707.52 in total fees. Declaration of Toby J. Marshall ("Marshall Decl.") ¶ 3; Declaration of Gregory A. Wolk ¶ 2. When those fees are divided among the twenty proposed class members, $2,485.38 is attributable to Mr. Skau. Marshall Decl. ¶ 4. JBS calculates that Mr. Skau's damages total $53,648.66. Dkt. No. 1 at 8–9. This brings the total amount in controversy to $56,134.04—still $18,865.96 short of the jurisdictional requirement. Marshall

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Decl. ¶ 5. The undersigned attorneys would need to incur an additional $377,319.20 in future fees for Mr. Skau's pro rata share to bring the amount in controversy up to $75,000. Marshall Decl. ¶ 6.

It is highly unlikely that Mr. Skau's attorneys will incur $377,319.20 more in fees. Both parties have expressed a willingness to resolve this case and agree that this case is well-suited for early resolution. *Id.* ¶ 7. The parties are cooperating in good faith to exchange the information necessary to participate in well-informed settlement negotiations. *Id.* The future fees that Mr. Skau's attorneys will incur is entirely dependent on the success of the parties' negotiations, which cannot be predicted at this time.

Thus, even if the Court finds that future attorneys' fees may be considered in determining the amount in controversy, JBS has failed to prove that Mr. Skau's share of fees would be sufficient to meet the jurisdictional requirement. The Court should remand this case.

C. An award of attorneys' fees and costs is appropriate.

Federal law expressly permits an award "of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). No finding of bad faith or improvidence is required. *Moore v. Permanente Med. Grp. Inc.*, 981 F.2d 443, 446 (9th Cir. 1992). Rather, an award of attorneys' fees and costs is proper if there was no "objectively reasonable basis" for removal. *Kerbs v. Safeco Ins. Co. of Ill., Inc.*, No. C11-1642 MJP, 2011 WL 6012497, at *4 (W.D. Wash. Dec. 1, 2011) (citing *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 140 (2005)). The purpose of the award "is simply reimbursement to plaintiffs of wholly unnecessary litigation costs the defendant inflicted." *Thomas v. Powell*, No.

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C10-53 MJP, 2010 WL 1849080, at *3 (W.D. Wash. May 7, 2010) (quoting *Moore*, 981 F.2d at 447).

JBS lacked an objectively reasonable basis for removing this case to federal court and caused Mr. Skau to incur unnecessary attorneys' fees and litigation expenses. JBS has ignored Judge Coughenour's order holding that future attorneys' fees may not be considered part of the amount in controversy and has misrepresented the Ninth Circuit's holding in *Chavez* in an attempt to relitigate the issue. *Chavez* makes no mention future attorneys' fees in the context of the amount in controversy, and it certainly does not alter the law pertaining to unaccrued and speculative fees. The Court has already disposed of this issue and remanded this case to state court. JBS provides no new or different grounds for removal to justify reconsideration of this issue.

Because JBS has provided no basis—let alone an objectively reasonable basis—for removal, Mr. Skau should be reimbursed for the unnecessary attorneys' fees and costs he incurred. If the Court agrees, Mr. Skau will timely submit a statement of the attorneys' fees and costs he has incurred in relation to JBS's improper removal.

IV. CONCLUSION

For the foregoing reasons, Mr. Skau respectfully asks the Court to grant his motion for remand and award him the attorneys' fees and costs he incurred in challenging JBS's improper removal.

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RESPECTFULLY SUBMITTED AND DATED this 11th day of June, 2018.

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I, Toby J. Marshall, hereby certify that on June 11, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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